IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.679 OF 2006

Mohan Subbanna Poojary ...Petitioner
H-17/7, S.G.Barve Nagar,
Bhatwadi, Ghatkopar (West)
Mumbai.400 084.

Vs.

1. State of Maharashtra
   through Secretary (Home),
   Home Department, Mantralaya
   Mumbai-400 032.
2. Chandra Iyengar
   Principal Secretary (Appeals & Security)
   Govt. of Maharashtra,
   Home Department & Detaining Authority,
   Mantralaya, Mumbai-400 032.
3. Neela Satyanarayana
   (Earlier Detaining Authority)
   Govt. of Maharashtra
   Mantralaya, Mumbai-400 032
4. The Superintendent of Prison
   The Mumbai Central Prison
   Arthur Road, Mumbai.
5. The Superintendent of Prison
   Nasik Road Central Prison, Nasik
6. The Secretary
   Advisory Board Constituted
   under COFEPOSA Act,
   Home Department (Special)
   State of Maharashtra
   12th floor, Mantralaya, Mumbai ...Respondents

AND

CRIMINAL WRIT PETITION NO. 689 OF 2006

Subbanna Manjappa Poojary ...Petitioner
H-17/7, S.G.Barve Nagar,
Bhatwadi, Ghatkopar (West)
Mumbai.400 084.

Vs.

1.State of Maharashtra
through Secretary (Home),
Home Department, Mantralaya
Mumbai-400 032.
2.Chandra Iyengar
Principal Secretary (Appeals & Security)
Govt. of Maharashtra,
Home Department & Detaining Authority,
Mantralaya, Mumbai-400 032.
3.Neela Satyanarayana
(Earlier Detaining Authority)
Govt. of Maharashtra
Mantralaya, Mumbai-400 032
4.The Superintendent of Prison
The Mumbai Central Prison
Arthur Road, Mumbai.
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Nasik Road Central Prison, Nasik
6.The Secretary
Advisory Board Constituted
under COFEPOSA Act,
Home Department (Special)
State of Maharashtra
12th floor, Mantralaya, Mumbai ...Respondents

Mr. S.M. Gupte, Sr. Advocate for Petitioner
Mr. S.R. Borulkar, P.P for the State

CORAM: SHRI J.N.PATEL &
SMT. ROSHAN DALVI, JJ.

DATED: 20TH OCTOBER, 2006

J U D G M E N T (Per Smt.Roshan Dalvi, J.)

1. The Petitioners in each of these Petitions, carry on their business as a Custom House Agent under the name and style of M/s. Kuvarji Darshi & Sons under CHA License No.11/171 for clearance of imported goods. The Petitioners are stated to have had an employee by name Ramesh Reddy.

2. The Petitioners came to be arrested on or about 14th July, 2006 for having fraudulently claiming export of certain chemicals aggregating to Rs.24.97 Crores and availed of certain export credit of an aggregate value of Rs.2.66 Crores upon certain forged and bogus documents. It was alleged that the Petitioner inter alia had shown certain bogus exports without any physical exports being effected between December, 2004 to April, 2005 in the name of his Firm M/s. Aristo Exports. The case against the Petitioner was that the documents submitted by the said firm M/s. Aristo Exports were in respect of 72 consignments evidenced by shipping bills of an aggregate value of Rs.23.48 crores, the scripts of which were obtained by the said firm and immediately sold to other parties who utilized them for the imports effected by them. No consignments of the said firm were shipped as exports, so that no exports actually came to be made though

claimed under the DEPB License.

3. The case against the Petitioners was investigated from 14th July, 2005. The Petitioners were released on bail on 20th July, 2005. The License was suspended on 14th September, 2005. It had to be surrendered, which order was complied by the Petitioners and challenged by them.

4. Consequent upon the said criminal case being filed against him proceedings under the Conservation Of Foreign Exchange and Prevention Of Smuggling Activities Act, 1974 (COFEPOSA) were initiated against the Petitioner. The Petitioners have challenged the order of detention under the said proceedings in this Petition.

5. The main contentions of the Petitioners are relating to the delay in passing the order of detention, the fact that they not allowed representation through the Lawyer before the Advisory Board and the fact that the order of detention came to be passed by the Detaining Authority swiftly and soon after her appointment as such the Detaining Authority and that the order came to be passed without considering further documents which came to be sent to the Detaining Authority by the sponsoring Authority without re-formulating the grounds of detention.

6. The first two of these contentions have not been pressed. Mr. Gupte has pressed only the last two conditions showing that the impugned order was so swiftly passed as to indicate that the Detaining Authority had not gone through the entire relevant material and formulated the grounds of detention herself and that even after the order came to be passed the further documents were sent to her which have not been separately considered as to reformulate the grounds as mandated under the decisions of the Supreme Court.

7. We are concerned with these aforesaid two aspects only.

8. The Detaining Authority took charge as the Principal Secretary (Appeals and Security) (Government of Maharashtra) (Home Department) and Detaining Authority on 10th January, 2006 she has passed detention order on 25th January, 2006. It is contended that she could not physically go through about 170 documents that formed part of the file to pass an order. It is contended that therefore, her order suffered from non-application of mind.

9. The Petitioners have asked for particulars relating to her entire working in the aforesaid capacity to show whether or not she could have passed the detention order as she did.

We are not concerned with her general work or her work load. We are only concerned with whether she has applied her mind to the facts of the case and whether she has passed the order of detention after application of her own mind.

10. The affidavit in reply of the Detaining Authority shows that she had called the Deputy Secretary for discussion on 20th January, 2006 and passed the order thereafter upon considering all the facts of the case.

11. We have called for the original file relating to the case of the Petitioners. The file shows the notings of the Under Secretary and the Deputy Secretary dated 18th January, 2006. The file also shows the endorsement in the margin that discussions were held on 20th January, 2006 and the matter was kept in the next week for orders. The file shows the endorsement of the Detaining Authority that she had considered the facts of the case and shows her directions to issue detention order in respect of all the proposed detinus. This endorsement is in her handwriting and signed and dated by her.

12. There is nothing even to remotely to show us that she has not applied her mind to the facts of the case that she

considered. Each Officer would perform his/her functions and duties, specially at the high level in which the Detaining Authority is, as per their own mode of work which would reflect the expedition or efficiency. We find no reason to conclude otherwise.

13. We may mention that the file shows a further endorsement that the detention order, grounds of detention and the annexures in respect of the Petitioners were submitted to the Detaining Authority as dictated by her. This endorsement has been signed by the employee making the endorsement on 3rd February, 2\\\006. It has been signed by the Under Secretary on 3rd February, 2006 and the Detaining Authority on 8th February, 2006.

14. Our attention has been drawn to the judgment of Division Bench of this Court dated 2nd November, 2004 in the case of Shaikh Javed Vs. State of Maharashtra in Writ Petition No.580 of 2004 in which also documents were received by the Detaining Authority in installments. Her affidavit showed that she carefully went through all the papers and gave her endorsement on certain dates. After further documents were forwarded to her also, she went through them and gave her endorsement. In that case it was held that the grounds of detention were formulated and

forwarded to her and she approved those reformulated grounds of detention. She contemporaneously issued the order thereafter. From such an event it was held that application of her mind was doubtless.

15. In this case on going through the original orders the application of the mind of the Detaining Authority cannot be doubted.

16. Mr. Gupte relied in the case of Varsha V. Jadhav Vs. State of Maharashtra in Criminal Writ Petition No.991 of 1992 dated 23rd October, 1992 by the Division Bench of this Court in which an order of detention came to be passed within 3 hours of the receipt of the papers by the Detaining Authority containing 240 pages. In that case it was held that the application of mind was suspect and that the order must have been penned in the mechanical manner on the recommendations of the subordinate Officers. This is not one such case. The Detaining Authority here had time from 10th January, 2006 to 25th January, 2006 to consider the facts of the case in the manner she deemed fit along with her work load which was only for her to manage.

17. It may further be mentioned that at this time, an application for compounding the offence made by the

Ramesh Reddy the said employee of the Petitioners dated 31st January, 2006 came to be received by the Sponsoring Authority on 7th February, 2006.

18. The Sponsoring Authority, therefore, sent further documents to the office of the Detaining Authority on 14th February, 2006. These were considered by the Under Secretary, Deputy Secretary as well as the Detaining Authority on 15th February, 2006. These documents were sent by the Sponsoring Authority along with additional brief facts for consideration of the Detaining Authority. The Detaining Authority has made a further endorsement in her own handwriting which is initialed and dated by her directing the further generated documents is to be included in relied documents list. It is at this juncture that the specific technicality of the law is required to be considered and which is seen not to have been followed by the Detaining Authority. The endorsement certainly shows that the documents were considered. The grounds of the detention had been formulated by her and dictated by her before receiving further documents. From amongst those documents the application for compounding the offence is stated to be the most vital document. It inter alia contains the admissions of the said Ramesh Reddy that it was he who had claimed the exports of chemicals without any physical

exports being effected by showing bogus exports covered under several shipping bills and effected by the firm M/s. Aristo Exports and that it was he who was responsible for immediately selling the consignment to other parties who utilized them towards the imports effected by them under the DEPB scripts. He has in terms admitted and confessed that he had forged and fabricated the documents relating to those consignments and had in fact shown the exports when none exist. It may at once be mentioned that his admissions/confessions, relied upon the Petitioners as the most vital of the further documents, in fact shows that the case made out by the Respondents, of bogus exports having been generated without any physical exports being made by the Firm of M/s. Aristo Exports, is correct. These admissions/confessions therefore shows that the Detaining Authority correctly made up her mind, however efficiently and expeditiously she dealt with the file.

19. The only point remaining for consideration in this Petition is whether such a confession/admission received by the Detaining Authority from the Sponsoring Authority, as a further generated document, after the grounds of detention were formulated and dictated by her, necessitated re-formulation of those grounds. That has not been done. After considering the further generated documents they are only

directed to be included in the relied upon documents list.

20. Upon such endorsement, the impugned orders came to be passed and served upon the Petitioners on 17th February, 2006.

21. Mr. Gupte relied upon the judgment of the Division Bench of this Court in the case of L.P. Jain vs. Union of India in Criminal Writ Petition No.193 of 1985 dated 26th September, 1985 in which it has been held that all the documents are required to be considered together to formulate fresh grounds of detention.

22. In fact this law has been laid down in the case of Ashwinikumar B. Halari Vs. State of Maharashtra 1987 Criminal Law Journal, 1798, in which also it has been held that the grounds of detention have to be formulated and the order of detention has to be passed only after considering all the material together and at a time. In that case additional documents were received in four installments after the detention order was issued and served upon the Detinue on 25th September, 1986 and after receipt of each installment of documents the Detaining Authority came to the conclusion that there was no need to alter the order passed and the grounds formulated earlier. Consequently the order of

detention came to be passed along with the same grounds.

23. In this case the grounds of detention came to be formulated upon the dictation of the Detaining Authority on 25th January, 2006 after which fresh documents came to be received on 15th February, 2006. Neither is there anything to show that the further generated documents were considered and were found irrelevant so as not to effect the formulated grounds at all, nor are the grounds of detention reformulated. Consequently it cannot be said that the grounds of detention, however erudite, and seen to be correctly formulated relating to the bogus exports as confessed by the employee of the Petitioner Ramesh Reddy, considered all the documents at the time. Subsequently received documents were only included in the relied upon documents list and supplied to the detinue.

24. In the case of Deepak G. Melwani Vs. The Union of India, 1999, ALL MR, (Criminal) 1016 the grounds of detention were formulated on 1st July, 1986. Certain documents were received subsequently and relied upon and supplied to the detinue. The grounds for detention were formulated before receiving the entire documents. They were not reformulated after receiving further documents. Reference to the case Ashwinkumar and the principle of law

contained therein was made in paragraph 15 of the judgment. However, it was held that the materials further received were entirely irrelevant and had nothing to do with the Petition. They had to be such material as would enable him to make a representation, which on being considered may give him relief. The unnecessary documents supplied later on the date of issuing of the order cannot create any presumption of non-application of mind. Hence, in that case the Petition for habeas corpus was dismissed.

25. In this case the documents which are supplied later inter alia contend the confession of the employee of the Petitioners that it was he who did all the acts which are in fact stated to have been done by the Petitioners as well as the said employee in unison. It is not disputed that the confession of the employee is the vital document. In fact it is specifically stated to be a vital document in paragraph 22 of the affidavit of the Detaining Authority and therefore relied upon by the Respondents and included in the list to be supplied to the Petitioners. Yet, the grounds of detention already formulated carry no modifications or amendments based upon the said confession. The application of mind to the said vital document therefore cannot be seen. All the documents therefore cannot be taken to have been considered together and at a time as per the principle of law

laid down in Ashwinkumar's case (supra).

26. We may mention that the same grounds of detention could have been retained against the Petitioners despite the confession of the employee in as much as the Petitioners as the employers of the firm of M/s. Aristo Exports were in law equally liable for the acts of the firm, and the application of confession showed the precise modus operandi that was unearthed by the investigating agency and for which the application for detention was considered by the Detaining Authority. However, a reference to that document and the reason why the confession made no difference to the case against the Petitioners or the fact that it was an after thought or got-up at the instance of the Petitioners to save themselves by involving their employee and the consequent conclusion thereupon was the mandatory requirement which remained to be fulfilled.

27. The further judgment of the Division Bench of this Court in the case of Rakesh Sherapalsingh Rana Vs. State of Maharashtra, 2001 Criminal Law Journal 606 relied upon by Mr. Gupte shows different facts under which the order came to be vitiated. In that case the Detaining Authority itself after considering all material on record sought additional documents and information from the Sponsoring Authority

but formulated the grounds on the available material without waiting for the additional documents and information and did not reformulate the grounds after receipt of additional documents and information. Nevertheless following Ashwinkumar's case it was held that the test of satisfaction remained incomplete as the documents were considered piecemeal and not all together.

28. Similarly in the case of Rupa Birendra Kumar Pai Vs. Union of India in Criminal Writ Petition No.939 of 1988 another Division Bench of this Court similarly held that when certain additional documents were received, the grounds of detention were mandatorily required to be reformulated and the decision of the Detaining Authority that he did not think it necessary to reformulate the grounds of detention vitiated the Order of Detention. Such cases need not be multiplied. The proposition is clear.

29. We are constrained to observe that though in this case the Detaining Authority meticulously considered the facts of the case and articulated the grounds of detention for the complicated transactions of bogus exports made out by the Petitioners with the help of their employee, which in fact came to be indirectly substantiated by the confession of the bogus exports by the employee himself, taking over the

entire responsibility for such transaction, in view of the specific law laid down by various Division Benches of our Court, we are constrained to hold that the considerations of the facts of the case on 25th January, 2006 and the inclusion of the further generated documents in the list of the documents to be supplied to the detinue failed, albeit by a flicker, to comply with the mandatory provisions of the law.

30. The affidavit of the Detaining Authority that it was not necessary for her to reformulate the grounds of detention shows an incorrect position of law. Though indeed it is not necessary for her to give her reasons to each of every document on the grounds of detention, as per the aforesaid decision she was enjoined to expressly consider the vital documents including those later supplied to her. That consideration should have been reflected in the grounds of detention showing that the simplicitor taking over of responsibility of the fraud by an employee did not absolve the Petitioners themselves of the liability for such fraud, the confession notwithstanding.

31. Consequently, we quash and set aside the impugned order of detention. The Petitioners be released forthwith if not required to be detained in any other case.

32. Rule is made absolute accordingly.

(SMT.ROSHAN DALVI, J.) (SHRI. J.N. PATEL, J.)